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IN THE

SUPREME COURT OF THE UNITED STATES

No. 71-1430

LESTER W. SEAMAN, Doing Business as LES'S ROLLER RINK a/k/a LEO'S ROLLER RINK,
Petitioner,

vs.

FRANK EVANS, on His Own Behalf and on Behalf of All Others Similarly Situated,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

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INDEX

	Page
Introductory statement	1
Jurisdictional statement	2
Questions presented for review	2
Applicable statute	2
Statement of the case	4
Reason for granting the writ	5
Argument	6
Conclusion	7
Appendix A, Opinion of Court of Appeals	A-1

Cases Cited

Daniel v. Paul, 395 U.S. 298, 89 S. Ct. 1697, 24 L. Ed. 2d 318 (1969) 6, 7

Miller v. Amusement Enterprises, Inc., 394 F.2d 342 (5 Cir. 1968) 6, 7

Statutes Cited

28 U.S.C., § 1254(1) 2

42 U.S.C., § 2000a(b) 2, 6

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INTRODUCTORY STATEMENT

The petitioner, Lester W. Seaman, respectfully petitions for a writ of certiorari to review a ruling by the United States Court of Appeals, Fifth Circuit, unofficially reported as *Evans v. Seaman,* 452 F.2d 749.

The decision was entered on December 10, 1971. Rehearing was denied February 8, 1972.

JURISDICTIONAL STATEMENT

Petitioner believes this Court has jurisdiction to review the decision by writ of certiorari by virtue of 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED FOR REVIEW

1. Whether petitioner's roller skating rink is a place of entertainment within the ambit of 42 U.S.C. §2000a(b)(c).

Applicable Statute

42 U.S.C. §2000a, provides, *inter alia*:

"(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section without discrimination or segregation on the ground of race, color, religion, or national origin.

"(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this sub-chapter if its operations affects commerce, or if discrimination or segregation by it is supported by State action:

"(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

"(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited

to, any such facility located on the premises of any retail establishment; or any gasoline station;

"(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

"(4) any establishment (A) (i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

"(c) The operations of an establishment affect commerce within the meaning of this subchapter if (1) it is one of the establishments described in paragraph (1) of subsection (b) of this section; (2) in the case of an establishment described in paragraph (2) of subsection (b) of this section, it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) of subsection (b) of this section, it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b) of this section, it is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, 'commerce' means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any state, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country."

STATEMENT OF THE CASE

The petitioner, Lester Seaman, operates what is primarily a one-man roller skating business. Occasionally, he hires a man to clean up the place for him. His bookkeeping is almost nil. The petitioner collects money from persons as they enter his place of business, but does not give them a receipt and does not even have a cash register. He operates the entire small business out of his pocket.

Petitioner's location off Terry Road is eight to ten blocks south of Pearl Street in Jackson, Mississippi. Terry Road comes off Interstate Highway 55 on the extreme edge of Jackson about twenty blocks from petitioner's small skating rink. The skating rink is approximately two miles north of U. S. Highway 80.

Petitioner does not permit spectators at his establishment, except parents who want to watch their children skate. There was no proof, and no serious argument, that petitioner had a "place of exhibition." Petitioner knows all of his customers, and all of his customers come from the immediate area of his place of business. The petitioner had never known of any out of state, or even out of city, patron to enter his place of business.

No food is available to any person desiring food, either at petitioner's establishment, or within eight or ten blocks thereof. Petitioner's patrons visit his place solely for the purpose of skating for exercise and for entertainment. Nothing is offered as an inducement to an interstate traveler to avail of this skating privilege.

The petitioner has never said, or written, or done anything to attract, or induce anyone in interstate commerce to trade with him. Petitioner has done nothing as owner

of this small business to divest himself of the right to trade, or not to trade, with any person of his choice, be he black or white.

The business in no wise and to no extent has any influence or impact upon interstate commerce. It is a very small, privately owned business, with a very small and select patronage in an obscure and out of the way location at Jackson, Mississippi, on a secondary thoroughfare, which is so far removed from any artery of commerce as to have no substantial relation thereto.

The Court of Appeals for the Fifth Circuit held that the roller skates which petitioner purchased from Acme, Alabama, having moved in interstate commerce, constituted a source of entertainment which moved in commerce.

REASON FOR GRANTING THE WRIT

The United States Court of Appeals for the Fifth Circuit in this case has decided a federal question of substance not theretofore determined by this Court.

ARGUMENT

Question 1: Whether petitioner's roller skating rink is a place of entertainment within the ambit of 42 U.S.C. § 2000a (b) "3".

The United States Court of Appeals for the Fifth Circuit misapprehended the point of law contained in *Daniel v. Paul*, 395 U.S. 298, 89 S. Ct. 1697, 24 L. Ed. 2d 318 (1969).

This Court held in *Daniel* (395 U.S. at 306, 89 S. Ct. at 1702):

> "In light of the overriding purpose of Title II 'to move the daily affront and humiliation involved in discriminatory denials of access to facilities ostensibly open to the general public,' H. R. Rep. No. 914, 88th Cong., 1st Sess., 18, we agree with the en banc decision of the Court of Appeals for the Fifth Circuit in Miller v. Amusement Enterprises, Inc., 394 F.2d 342 (1968), that the statutory language 'place of entertainment' should be given full effect according to its generally accepted meaning and applied to recreational areas."

The petitioner contends that the Court of Appeals for the Fifth Circuit enlarged its own ruling in *Miller v. Amusement Enterprises, Inc.*, 394 F.2d 342 (5 Cir. 1968) and this Court's ruling in *Daniel*, and, in effect, has held that the statutory language "place of entertainment" should be applied to *all* recreational areas, whether the recreational area in question is a place of entertainment or not.

The recreational areas in *Miller* and *Daniel* were *places of entertainment;* however, the recreational area in this case is not a place of entertainment.

Miller and *Daniel* stand for the proposition that when a recreational area is a place of entertainment, it is covered by the Act; when the recreational area in question is not a place of entertainment, it is not covered by the Act.

Just because a place of entertainment is also a recreational area does not exempt it from the Act. To like effect, just because a place of business is recreational area does not make it a "place of entertainment." If the recreational area is not a "place of entertainment", there is no "source of entertainment" which can "move in commerce."

The Court of Appeals for the Fifth Circuit went far beyond this Court's ruling in *Daniel*, far beyond the plain language of the Act itself, and far beyond the plain intent of Congress in enacting the legislation.

CONCLUSION

The petitioner respectfully requests that the ruling of the Court of Appeals for the Fifth Circuit be reversed and the ruling of the District Court reinstated.

Respectfully submitted

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APPENDIX

APPENDIX A

In the
United States Court of Appeals
for the Fifth Circuit

No. 30811

Summary Calendar*

FRANK EVANS, on his own behalf and on behalf of all others similarly situated,
Plaintiff-Appellant,

versus

LESTER W. SEAMAN, doing business as LES'S ROLLER RINK, a/k/a LEO'S ROLLER RINK,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Mississippi

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(December 10, 1971)

Before BROWN, Chief Judge, INGRAHAM and RONEY, Circuit Judges.

INGRAHAM, Circuit Judge: This is an appeal from a denial of injunctive relief under 42 U.S.C.A. § 2000a.

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* Rule 18, 5 Cir.; See *Isbell Enterprises, Inc. v. Citizens Casualty Co. Inc. of New York, et al.*, 8 Cir.; 1970, 481 F.2d 488.

Appellee Seaman is the owner and sole operator of a roller skating rink in Jackson, Mississippi. The rink, which is located in a part of town which is out of the way to an interstate traveler through Jackson,[1] has been operating with a continuing policy of excluding blacks from admission to the rink while otherwise admitting the public.

Seaman purchases his skates and spare parts from a firm in Alabama. Additionally Seaman owns six vending machines which he houses within the rink to provide snack foods and beverages for his patrons.

Appellant is a resident of Dallas, Texas, who while in Jackson was refused admission, as Seaman admits, on the basis of his race.[2]

The district court found that notwithstanding Seaman's exclusionary policy, his rink was not an establishment covered by Title 2 of the 1964 Civil Rights Act, 42 U.S. C.A. 2000a.

On appeal Evans asserts that the rink was a covered establishment on two alternative theories. First, he argues that the presence of vending machines dispensing products, which the district court found to come from the

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[1] The district court, in its order referring to Seaman's rink, stated:

> "It is a very small, privately owned business, with a very small and select patronage in an obscure and out of the way location in Jackson on a secondary thoroughfare, which is so far removed from any artery of commerce as to have no substantial relation thereto."

[2] On two occasions appellant Evans and others, all of whom are black, appeared at Seaman's rink. On both occasions they were refused admission. The appellee has stated that he has never admitted any blacks to his establishment and that he has always turned them away. If Seaman's rink is a place of public accommodation covered by Title 2 of the 1964 Civil Rights Act, 42 U.S.C.A. 2000a, et seq., then these facts are sufficient to invoke the protection of the Civil Right Act. *Cf. Heart of Atlanta Motel, Inc. v. United States,* 879 U.S. 841 (1964).

stream of interstate commerce, is sufficient under 42 U.S.C.A. § 2000a(a) (c) to warrant the entry of an injunction. His argument is that the vending machines were installed as the sole source of refreshments for guests at the rink, and, assuming the products sold substantially affect interstate commerce, are the legal equivalent of the lunch counter, soda fountain or other facility engaged in selling food within the meaning of 42 U.S.C.A. § 2000a(b) (2). The district court found that the sale of vending machine products was a substantial portion of the rink's gross revenue and that most of the products came from outside Mississippi. Appellant here argues that these findings required a conclusion that the location of the vending machines within the skating rink made the entire rink a covered establishment under 42 U.S.C.A. § 2000a(b) (4). The district court, when presented this argument, however, rejected it and concluded that the machine-vended soda, ice cream and snacks were not food. While appellant's argument before this court is persuasive, it need not be decisive as his second argument leads us to the conclusion that Seaman's rink is a covered establishment.

Appellant's second argument is that the rink, assuming it otherwise meets the test of affectation of interstate commerce, 42 U.S.C.A. § 2000a(c), is by its very nature a place of public accommodation falling within the ambit of 42 U.S.C.A. § 2000a(b) (3), as a "place of exhibition or entertainment." The relevant portion of the statute provides:

> "(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.
>
> "(b) Each of the following establishments which serves the public is a place of public accommodation

within the meaning of this sub-chapter if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

* * * * * * * *

"(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment;

* * * * * * * *

"(c) The operations of an establishment affect commerce within the meaning of this subchapter if * * * (3) in the case of an establishment described in paragraph (3) of subsection (b) of this section, it customarily presents its generally accepted meaning and *applied to recreational areas.*"

In the case at bar the district court characterized the roller rink as a place of recreation. The remaining question, therefore, is whether the operations of Seaman's roller rink "affect commerce" within the meaning of § 2000a (c) (3). We conclude that they do. The rink is not entertaining by itself. Rather its source of entertainment is the use of roller skates upon its surface. Those roller skates and the replacement parts for them were purchased from the Alabama company. The skates, therefore, constitute the "sources of entertainment [which] move in commerce."

The order and judgment of the district court are REVERSED and REMANDED for entry of an order which will effectuate the policies of the Civil Rights Act of 1964. On remand the trial judge is to determine and grant reasonable attorney's fees as are warranted unless special circumstances would render such an award unjust. *Newman v. Piggy Park Enterprises,* 390 U.S. 400 (1968); *Miller v. Amusement Enterprises, Inc.,* 426 F.2d 534 (5th Cir., 1970).

REVERSED and REMANDED.